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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 612

EDWARD SPEICE,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

REPLY OF PETITIONER TO RESPONDENT'S BRIEF

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The respondent would have this court avoid deciding the important issue here by resorting to a specious argument that the court should not consider the question, because petitioner suppressed, distorted, and falsified the record. (Respondent's Brief, p. 2).

We respectfully ask the court to compare our statement of facts in connection with the testimony of police officer John Willett as set out on pages 6 and 7 of our petition

with the testimony as set out by the respondent on pages 3 and 4 of its brief. A comparison will show that all essential facts necessary for a consideration of the legal question is included in the statement of facts as presented by the petitioner.

May the State sanction a midnight invasion of a citizen's dwelling place, absent that citizen's invitation, where the police officers testified that the wife invited them to come into the apartment out of the hallway, and where the wife denied she made such invitation? Even if such invitation by the wife were given, under the circumstances, is not such "invitation" the result of that degree of implied coercion held to be violative of the Fourth Amendment to the Constitution in Amos v. United States, 255 U.S. 313 and therefore condemned?

In its brief, the State contends that the testimony of the wife in denying that she gave the police confronting her at midnight permission to enter the apartment and denied that she gave them permission to search the apartment must be ignored. The State argues that so long as the trial court believed the officers and not the wife that, therefore, consent must have been freely given as testified to by the officers.

But such an argument flies in the face of common experience and ordinary reason.

Would the officers really go away upon not receiving an "invitation" to enter the home because they had no search warrant? The time was near midnight. The woman was alone in her apartment with her child. She was nervous, upset and crying (even the officers testified to this) upon the officers' confronting her. Her husband, the petitioner, was not home.

It is the State's contention that when there is a conflict of testimony between the officers who state that invitation was given and the wife who testified that invitation was not given, that the trial court's ruling forecloses any appellate review. We respectfully submit that, under the circumstances, this court may review the finding of the trial court.

Assuming a wife grants consent to officers, under the circumstances, is not such consent impliedly coerced?

The wife was home alone with her child when officers confronted her in the hallway of her home near midnight. Petitioner's wife was upset (A. 7) and was crying (A. 8). Although she stated she gave no permission to the officers to enter (A. 8), assuming she gave permission to the officers, is any more evidence needed to demonstrate that her police-asserted "invitation" was coerced?

> "The contention that the constitutional rights of defendant were waived when his wife admitted to his home the government officers, who came, without warrant, demanding admission to make search of it under government authority cannot be entertained." *Amos v. United States*, 255 U.S. 313 at 317.

Is this not a submission to lawful authority which does not rise to the dignity of consent? 31 A.L.R. 2d 1097.

This court should grant certiorari to determine whether or not a wife may waive a husband's constitutional right by consenting to the search of his dwelling.

Even assuming that the wife freely gave her consent to search the apartment at midnight, can such consent deprive the husband of his constitutional rights? This question has never been squarely decided by this court. For *Amos* v.

United States, 255 U.S. 313, did not reach the exact point. In *Amos*, this court said, p. 317:

> "We need not consider whether it is possible for a wife, in the absence of her husband, thus to waive his constitutional rights, for it is perfectly clear, that under the implied coercion here presented, no such waiver was intended or effected."

This court should grant certiorari to decide this important constitutional question.

The "matrimonial" argument advanced by the respondent (its brief, pp. 7-9), has not too much meaning and has no application to the issues here.

CONCLUSION.

By its spurious argument, the respondent has really begged the question and has, in effect, confessed error.

This court should grant certiorari because of the importance of the questions presented and because the court should now amplify its holding in *Amos* v. *United States*, 255 U.S. 313, to determine whether a wife may waive her husband's constitutional rights.

Respectfully submitted,

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